STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
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GRAY DAVIS, *Governor*

July 30, 1999

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VIA U.S. MAIL

Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
Portals
445 Twelfth Street, S.W.
Washington, D.C. 20024

Re: CC Docket No. 99-200

Dear Ms. Salas:

Enclosed please find an original copy of the COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA in the above-referenced docket.

Also enclosed is one additional copy of the document. Kindly file-stamp this copy and return it to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter. If you have any questions, I can be reached at (415) 703-1319.

Sincerely,

Helen M. Mickiewicz

Helen M. Mickiewicz
Counsel for California

HMM:abh

Encl.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:	
Numbering Resource Optimization	CC Docket No. 99-200
Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission's Rule Prohibiting Technology-Specific or Service-Specific Area Code Overlays	RM No.9528
Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes	NSD File No. L-99-17
California Public Utilities Commission and the People of the State of California Petition for Waiver to Implement a Technology-Specific or Service-Specific Area Code	NSD File No. L-99-36

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit to the Federal Communications Commission

(FCC or Commission) these Comments on the FCC's Notice of Proposed Rulemaking (NPRM), released June 2, 1999.

The NPRM is extremely large in scope, and the CPUC, like many parties, cannot now respond to every question. Indeed, the CPUC simply is not equipped to respond to some of the requests for technical data. Consequently, the CPUC focuses its comments on the issues most vital to California. At the same time, the staff of the CPUC has worked with staffs from a number of other state commissions to develop a fairly comprehensive outline of state responses to the myriad issues contained in the NPRM. That outline is attached to these Comments. While the outline contains a caveat requested by a number of states, California endorses the positions set forth in the outline. Where our views differ from those in the outline, we have noted the difference and addressed the issue separately in these Comments.

I. INTRODUCTION

The FCC is at a critical juncture. Numbering resources in the United States are being depleted at an alarming rate. As the FCC notes in the NPRM, unless corrective actions are taken, the North American Numbering Plan is facing exhaust sometime within the next decade. (NPRM, ¶ 5.) The reasons for the number drain are many: introduction of new services and technologies, population and economic growth, expanded competitive opportunities, especially in the provision of local exchange service, and consumer demand for more access lines. Yet, underlying all of these is an archaic, outmoded, arcane number allocation system which has severely compounded the demand

for numbers by compelling requesting carriers to accept vastly more numbers than they can use.

The inefficient way in which numbers are allocated has resulted in further, astounding inefficiencies in the way numbers are used. The Commission itself notes that utilization estimates range from 5.7% to 52.6% depending on the industry segment.[1] (NPRM, ¶ 21.) Because carriers need a separate NXX code in every rate center, they request and obtain, to the extent possible within the context of code rationing, one or more NXX codes in each rate center where they wish to do business.

Despite the inefficient allocation system, industry response to the rate at which they are drawing numbers has been to insist vehemently, repeatedly, and consistently that the "solution" to the numbering crisis throughout the nation is for state commissions to give out more numbers faster, and to consolidate rate centers. The incalculable cost to consumers of enduring repeated area code relief is absolutely not of concern to the industry. Indeed, at a panel of industry presentations on numbering issues at a recent NARUC meeting in San Francisco, not one panelist even once mentioned the impact of numbering issues on the public. Carriers evince a "public-be-damned" attitude; as long as they obtain the numbers they want, nothing else matters.

The CPUC does not say this casually. Our staff participates routinely in area code planning meetings and conference calls. At a meeting in September, a CPUC staff member raised an issue pertaining to the need for intercept messages to inform customers

[1] The ILECs in California consistently contend that their utilization rates are in the 85 to 87% range.

about area code changes. The immediate, and predominant, response from the industry was, "this will cost money".[2] Indeed, in filings before the FCC responding to state challenges to the Pennsylvania Order and state petitions for delegation of additional authority, carriers argue that addressing state concerns about the escalating public cost of area code relief would require them to spend money to adapt to different state conservation approaches.

Because they are focused on their companies' profit margins, the industry collectively is disinterested in solutions to the national numbering crisis that will cost more than they are currently paying. The numbering "problem", as carriers perceive it, is that state commissions are not implementing timely relief. In contrast, the numbering "problem", as the public sees it, is that too many area codes are being created too quickly. The public is being asked to shoulder the financial burden and the gross inconvenience of learning new area codes and of changing business cards, stationery, and advertising. In the case of an overlay, the public must adapt to dialing the area code plus the seven-digit number. Plus, they must now be aware that the new neighbor across the street is in a different area code. The public must pay additional costs for directory assistance or to obtain directories for areas outside their home NPA. All of this is occurring at dizzying speed, thus requiring the public to adopt change at a pace that is extremely difficult to manage.

[2] In fairness, industry participants also asserted that intercept messages should conform to national standards, and agreed to participate in a joint effort with CPUC staff to find a solution to the problem our staff identified.

The FCC in the recent past has adopted numbering policies intended to foster the development of competition, particularly in the local exchange market. Unfortunately, as time has passed, those policies have hamstrung state commissions in their attempts to curtail the costs and inconvenience imposed upon the public by repeated area code changes. Those same policies have allowed carriers to obtain enormous quantities of numbers, many, many of which are unused. The Commission has the opportunity in this NPRM to adopt policies which will prevent the public from incurring indefinitely the increasing costs associated with area code relief. The Commission can establish a regulatory structure which asserts much greater public control over public numbering resources.

Further, the FCC can use this opportunity to delegate additional jurisdiction over numbering issues to the states. As FCC Chairman Kennard noted at a recent NARUC meeting in San Francisco, area code relief involves "very emotional and very local issues". Indeed, the CPUC is one of many state commissions under tremendous public pressure to "do something" about the numbering problem. We have a more direct and intimate understanding of local circumstances and of public reaction to area code relief. Consequently, it behooves the Commission to involve state commissions more directly in monitoring and controlling the flow of public numbering resources.

Finally, above all else, we urge the FCC to recognize that the phenomenal and rising costs of the numbering crisis are being borne first by the public and second by the

industry. The Commission has the chance to reverse that situation, and the public interest demands that the FCC do so.

II. SOME OF THE NPRM'S PROPOSALS WOULD NOT PROTECT THE PUBLIC INTEREST

The CPUC is gravely concerned about three specific issues discussed in the NPRM: rate center consolidation, number pooling, and carrier choice of conservation measures. The FCC appears to consider rate center consolidation (RCC) as the primary option for resolving the current numbering crisis. "We believe that rate center consolidation should be implemented to the greatest extent possible, and we seek comment on what actions this Commission should take to promote rate center consolidation". (NPRM, ¶ 116, emphasis added.) While highlighting the advantages of RCC, the FCC barely mentions the prospect of rate adjustments that may be required when rate centers are consolidated in a manner that reduces incumbent local exchange carrier (ILEC) toll revenues. "[W]here local calling scopes must be modified in connection with rate center consolidation, carrier revenue may decrease, because a larger percentage of revenue may be derived from basic local service and a smaller percentage from toll service." (Id. at ¶ 114.) Put another way, when an ILEC loses toll revenue because rate centers are consolidated, thus converting some toll calls to local calls, the ILEC may – most certainly will – seek recovery of that lost toll revenue via increased monthly rates for basic exchange service.

In California, we have approximately 800 rate centers. While the CPUC in 1990 expanded the local calling area in 1990 from eight to twelve miles, we still have a

uniform, statewide, relatively small local calling area. We believe that consolidating a significant number of these 800 rate centers in California poses the potential for profound, direct, and permanent rate impacts on customers. Yet, we are troubled to see that the FCC does not seek, nor does it suggest as appropriate, a cost-benefit analysis of RCC. Rather, the Commission has concluded – without characterizing its statements as "tentative conclusions" – that "rate center consolidation should be implemented to the greatest extent possible". (NPRM, ¶ 116.)

The Commission clarifies that states have full authority to implement RCC, noting that "rate centers are inextricably linked with local call rating and routing issues, which fall within the traditional jurisdiction of state public utility commissions . . .".[3] (Id. at ¶ 117.) Yet, the FCC goes on to suggest that, even though RCC is a matter of state jurisdiction, perhaps the states need a nudge to get moving on RCC: "should we grant states the authority to implement pooling only after they have undertaken rate center consolidation in the area in question?"[4] (Id. at ¶ 120.)

In contrast, the Commission takes a very different approach to number pooling. There, the FCC states "[w]e believe that carriers should be required to participate in

[3] The CPUC appreciates this clarification. In our PFR of the Pennsylvania Order (filed November 6, 1998) we asked the FCC to clarify that states have authority to consolidate rate centers. (See CPUC PFR, pp. 21-22.)

[4] This statement alone indicates the need for a further NPRM just to address what standards would be used to determine when a state has "undertaken" RCC. For example, what does "undertaken" mean? That the state has opened a docket addressing RCC? The state has reduced its total number of rate centers by half, a third or three-quarters? The consolidation has been ordered, or implemented? In addition, what is the "area in question"? Has the FCC unintentionally prejudged the outcome of the NPRM on pooling issues by suggesting here that pooling can only occur in certain areas, where RCC has been implemented, but not statewide, or nationwide?

pooling in areas where the benefits of pooling outweigh the associated costs".[5] (NPRM, ¶ 138.) Thus, the FCC posits that the costs to carriers of implementing number pooling are a significant factor in determining whether it is to worthwhile to implement number pooling. At the same time, the Commission apparently did not consider either the costs of consolidating rate centers or the resulting rate impacts on end users to be legitimate subjects for comment in the NPRM. Nor does the FCC seem to consider the societal costs of area code relief or North American Numbering Plan (NANP) expansion to be important factors in evaluating the efficacy of number pooling.

In addition, the FCC proposes that individual carriers be given the "choice" of what conservation methods the carrier considers most appropriate for its needs.[6] "Here, we seek comment on whether we should simply establish thresholds for efficient use of numbering resources, but leave the choice of method for achieving these thresholds to individual carriers." (NPRM, ¶ 216.) The net effect of the RCC, number pooling, and carrier choice proposals, from the CPUC's perspective is that the FCC is considering a regulatory scheme in which the states' ability to implement number pooling could be held hostage to a federal requirement that rate center consolidation be accomplished first.

[5] What costs does the FCC have in mind here? Is the FCC willing to consider the virtually incalculable costs to the public of undergoing constant area code changes? Or the costs of NANP expansion, which will result in lieu of conservation efforts such as mandatory number pooling? Is the FCC only interested in direct costs to carriers? The CPUC believes fervently that many of the public costs associated with frequent area code relief, i.e., the external costs, will be avoided when number pooling dramatically slows the drain on numbers and the commensurate need for new area codes. These avoided external costs must be included in any cost-benefit analysis.

[6] The CPUC sees this recommendation as particularly flawed, and addresses the proposal in more depth later in these Comments.

As we have noted in previous filings with the Commission, we anticipate that RCC could take up to eighteen months, and perhaps longer, to accomplish on a statewide basis. The industry has yet to provide the CPUC with any specific recommendations as to which rate centers could be consolidated. The industry has not, for example, proposed a plan to reduce the number of rate centers in California from 800 to 400, or to 200, or to 600. Nor has the industry offered any proposals on how such consolidation would be accomplished and how customers would be affected. Rather, the industry has simply asked the CPUC, via letter, that we resolve associated revenue issues before the industry will develop detailed recommendations or propose specific technical solutions associated with RCC.[7] We do not know how we can resolve the revenue issues when we have no proposal with associated revenue impacts to evaluate. Further, we would violate state law if we were to approve rate adjustments without determining that the rates adopted are reasonable.[8] Thus, we find ourselves in a "Catch-22" as far as moving forward on RCC.

Rate center consolidation will mean direct, substantial and permanent basic rate increases for many customers, unless the ILECs forgo their claim that it should be revenue neutral. Further, requiring that states implement RCC before number pooling severely limits a state commission's discretion to determine whether RCC is appropriate or manageable based on its specific circumstances. At the same time, the FCC proposes broad discretion for carriers, which would be able to "pick and choose" the conservation

[7] A copy of the industry letter is appended to these Comments as Attachment 2.

[8] See Public Utilities Code § 451: "All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and

methods, if any, they might want to pursue to meet their utilization thresholds. Carriers, thus, would have considerably more discretion than state commissions.

In the CPUC's view, the FCC has it backwards. State commissions, not industry players, represent the public interest in the management of number resources.[9] The FCC itself acknowledges that numbers are a public resource, but then proposes to continue to allow greater private sector control, rather than public control, over how this resource is used and managed.[10] California fully supports adoption of FCC rules which would govern number pooling. And, we support conversion of industry guidelines to federal rules which would govern carriers and state commissions. But, we also believe that state commissions, not carriers, should have some degree of flexibility in applying those federal rules to ensure that the public interest in the public's resource is effectively protected. Thus, we urge the FCC to reject carrier choice and to adopt a set of rules pertaining to numbering management and allocation which carriers and state commissions must follow. At the same time, the CPUC urges the Commission to allow state commissions, but not carriers, some flexibility to deviate from the rules when the state commission determines that the public interest would not be served by strict compliance with the rule in question.

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reasonable." (Emphasis added.)

[9] The CPUC recognizes that the FCC also, of course, is charged to represent the public interest.

[10] "We agree that numbers are a public resource. . .". (NPRM, ¶ 229.) Also, "[w]e seek comment on whether a license-type arrangement would be consistent with our long-held view that numbers are a public resource". (Id.)

III. ADMINISTRATIVE MEASURES

A. Definitions of Categories of Number Use

1. Administrative Numbers

The CPUC concurs with the recommendations and comments on the definition of "administrative numbers" set forth in the state outline. California also proposes, however, that a provision prohibiting companies from reallocating these numbers to customers at a later date be added to the definition. (NPRM, ¶ 41.) This prohibition would discourage companies from stockpiling administrative numbers for future reallocation. We also recommend that the FCC adopt specific regulations to discourage and prohibit indiscriminate allocation, indiscriminate use, or irresponsible use by carriers of numbers in this category.

2. Assigned Numbers

Similarly, the CPUC agrees with the states' recommendation on assigned numbers, contained in the state outline, regarding the need for specific limits on the amount of time customer orders can be "pending". (NPRM, ¶ 43.) At the same time, California recommends that the FCC clearly distinguish between "assigned numbers" and "reserved numbers", to ensure that carriers cannot take advantage of definitional ambiguities to treat more numbers as "reserved".

3. Dealer Numbering Pool

The CPUC believes that the definition of a dealer numbering pool should specify that these sets of numbers are categorized as part of a service provider's inventory of unassigned numbers. If the Commission decides not to add this component to the

definition of "dealer numbering pool", then we urge the FCC to give states the flexibility and authority to limit the quantity of numbers carriers may place in dealer numbering pools. Finally, we urge the FCC to amend the definition of "dealer numbering pool" to clarify that numbers allocated to dealer pools cannot be excluded from reclamation and number pooling efforts.

4. Reserved Numbers

California agrees with the state outline that the FCC should establish a narrow definition of "reserved numbers" at the national level. We also recommend, however, that the Commission delegate to the states authority to adopt narrower definitions and to impose tighter restrictions on the use of reserved numbers in order to meet local needs and to support conservation efforts. Allowing the states to more strictly define "reserved numbers" will not impair the national numbering system in any manner, but will allow states with intense competition for public numbering resources to more closely monitor the way in which those resources are used.

5. Categorization of Reserved Numbers

The CPUC disagrees with the definition of "reserved number" proposed by MCI WorldCom. (NPRM, ¶ 48.) MCI's definition will facilitate the stockpiling and continued inefficient use of numbers. Instead, California agrees generally with the amendments proposed in the state outline. We also recommend that the FCC delegate additional authority to state commissions to impose additional rules regarding numbers held in

reserved blocks, if the customer awarded the block fails to activate those numbers in a specific time frame.

6. Time Limits on Reserved Status

We generally agree with the position set forth in the state outline on the need for specific timelines for reserved numbers and blocks of numbers. We also share the states' concern that fees for numbers could impede competition and be passed onto end users. In addition, we feel that the question of charging fees for "reserved numbers" is subsumed into the broader issue of whether carriers should be required to pay some type of fee(s) for access to numbering resources. We recommend that the FCC address the question of charging for reserved numbers in conjunction with the broader pricing option proposals in the NPRM. Our discussion of that broader topic is in § V of these Comments.

B. Verification of Need for Numbers

The CPUC concurs with the positions set forth in the attached state outline regarding verification of the need for numbers. California wishes, however, to underscore our fervent belief in the importance of verifying the need for numbers, as well as the actual use of numbers, which we will address later in these Comments.

The CPUC concurs with the FCC's tentative conclusion that all users of numbering resources should be mandated to supply forecast and utilization data to the North American Numbering Plan Administrator (NANPA). (NPRM, ¶ 73.) We also agree that the Commission should "establish a more extensive, detailed and uniform reporting mechanism that will improve numbering utilization and forecasting on a

nationwide basis". (Id.) While the state outline recommends that forecast and utilization data be reported at the NXX level, the CPUC believes the data would be vastly more useful and more accurate if it were reported at the 1,000-block level. We urge the Commission to establish reporting requirements at the 1,000-block level.

Further, California wishes to emphasize that no carriers should be exempt from reporting requirements, which should be uniform for all carriers in all industry segments. A carrier's status as a new entrant or a wireless service provider might affect how the forecast or utilization data is interpreted or applied. But those factors should not allow for lesser reporting requirements for one or another industry segment. Effective monitoring and enforcement can only be achieved if regulators have a complete picture of what numbers are in use, not in use, reserved, or forecast to be needed.

The CPUC supports the FCC's tentative conclusion that carriers "should report utilization and forecast data on a quarterly basis here, rather than the current annual reporting. It has been California's experience that annual reporting of information is woefully inaccurate as new carriers enter the market quarterly, and business plans can change on a monthly basis. Again, we believe that reporting requirements should be uniform for all carriers, and oppose FCC rules differentiating between carriers in high-growth-rate NPAs and low-growth rate NPAs. The growth rate in the respective NPA can be taken into account in evaluating the meaning of the data collected, but it should not dictate the frequency of data reporting. Besides, distinguishing "high-growth rate" and "low-growth rate" NPAs for reporting purposes could be arbitrary, and, if the

distinction is mandated by the FCC, may not reflect different conditions in different states.[11]

The CPUC believes that carriers should report utilization and forecast data to the NANPA, but that state commissions should have access to any and all such data. We appreciate carrier concerns about the need to maintain confidentiality of the data. In California, CPUC employees are prohibited both by state law and by our own General Order 66-C from disclosing outside the CPUC information which is provided on a confidential basis to this agency.[12] Therefore, the confidentiality of forecast and utilization data collected by the NANPA or another party and submitted to the CPUC would be fully protected.

Finally, the CPUC concurs with those commenters who have observed that the COCUS is an inaccurate means of reporting forecast data. California supports both 1) reporting requirements in addition to the COCUS, for now, and 2) replacing the COCUS with a more accurate forecasting measure. California understands that the NANC is currently evaluating alternative forecasting tools.

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[11] For example, a high-growth rate NPA in Montana could be a very low-growth rate NPA in California.

[12] See California Public Utilities Code § 583:

> "No information furnished to the commission by a public utility, except such matters as are specifically required to be open to public inspection . . . shall be open to public inspection or made public except on order of the commission of by the commission or a commissioner in the course of a hearing or proceeding. Any officer or employee of the commission who divulges any such information is guilty of a misdemeanor."

If the NANPA collects utilization and forecast data and provides it to the CPUC, our employees would still be bound by the provisions of P.U. Code § 583, as the NANPA would be acting as an agent of the utilities for purposes of submitting the data to this agency.

C. Audits

The CPUC has little to add to the state outline on the subject of audits. We do wish to express our strong opposition to a potential FCC mandate that state commissions perform audits. State commissions may not have the resources to perform audits of the scope and scale the FCC proposes in the NPRM. We can assert categorically that while the CPUC can perform utilization studies, we do not have adequate staff resources to conduct numbering audits. If the FCC orders states to perform audits, we would have to seek a budget augmentation to obtain the resources and that is always a highly problematic and unpredictable process.

We believe audits should be conducted by an independent third party either on a regional or nationwide basis. Certainly, the NANPA has access to data that would assist an auditor in performing this function. But the CPUC is mindful that the current Requirements Document does not include auditing as a NANPA function. Thus, were the NANPA to perform auditing functions, the issue of compensation would need to be resolved. We do not oppose, instead, use of a bidding process to secure the services of another party to fill the role of independent auditor.

D. Enforcement

The CPUC concurs with the positions set forth in the state outline regarding the division of enforcement responsibilities between the FCC, state commissions and the NANPA. California believes the FCC should establish rules regarding allocation of number resources, but should delegate to states wishing to carry out enforcement activities the authority to do so. In saying this, we urge the FCC to be clear and explicit

in any delegation of authority to the states, so that carriers cannot exploit vague language to game the process by running from one agency to another. Further, in this regard, the FCC should be very clear and explicit if it chooses to delegate additional authority to the NANPA. The FCC should determine whether state commissions, in addition to the NANPA, should have this authority or whether only state commissions should have this authority.

For example, currently, only the NANPA has authority to ask that a carrier return NXX codes which the carrier was assigned but has not opened in the time-frame allowed by industry guidelines. As the FCC notes, the NANPA has been reticent to exercise that authority, presumably because the NANPA has no other jurisdiction over carriers. (NPRM, ¶ 95.) The NANPA cannot revoke a carrier's license, nor refuse to allow an offending carrier access to future numbering resources if the carrier refuses a NANPA request for return of codes. For these reasons, the CPUC believes it to be far more practical to authorize states to enforce FCC numbering rules. At the same time, however, the CPUC urges the FCC to allow states some flexibility in enforcement activities. States should be able to evaluate each case separately, and determine whether the carrier has acted in error or with deliberation. The punishment should fit the crime, assuming there is a crime.

Finally, the CPUC recommends that the FCC authorize state commissions to engage in numbering administration on a case-by-case basis, and only upon the request of the particular state commission. California, at present, has no interest in taking on

number administration functions, nor does it have the resources to do so. Our staff has a good working relationship with the NANPA, and numbering administration in California works as best it can in light of the constraints imposed by federal rules and industry guidelines. At some point in the future, however, the CPUC might consider it to be in the public interest to have this agency perform some numbering administration functions. In that event, we would expect to seek such authority from the FCC, pursuant to whatever process the Commission establishes in its order on the instant NPRM.

E. Reclamation of NXX Blocks

The CPUC has nothing to add here to the position set forth in the state outline.

F. Cost Elements and Cost Recovery

We have the following observation to add to the positions in the state outline.

We note that in California, negligible residential local exchange competition has developed to date. Despite the presence of over 100 competitive carriers authorized to provide local exchange service in this state, upwards of ninety-five percent of residential customers in California cannot chose a local exchange provider other than the ILEC. At the same time, we are generally aware that some measure of competition exists in California for business local exchange service. Given that the vast majority of residential customers in California do not yet have any competitive alternatives for local exchange service, imposing the costs of implementing RCC could mean that those customers would be making payments permanently to facilitate competition that, to date, is primarily benefiting business customers. In contrast, the costs of number pooling will be much

lower per customer and for a fixed period of time, particularly if they are assessed, as the FCC proposes, via a federal recovery mechanism. (See NPRM, ¶¶ 193-196.) The comparable recovery charge for local number portability was initially fifty cents per customer, recently reduced by thirty percent, and will cease after five years. Number pooling costs also should be temporary as the majority of number pooling costs will be incurred to set up the pooling administration infrastructure.

G. Carrier Choice of Numbering Optimization Strategy

The CPUC agrees with the position set forth in the state outline opposing carrier choice of numbering optimization strategies. (NPRM, ¶ 216.) California believes the FCC has struggled to develop proposals intended to lengthen the life of the NANP, and to ensure that public numbering resources are used as efficiently as possible. Yet, no proposal in the NPRM more belies that intent, nor poses more potential to thwart all other state and federal efforts to control the drain of numbers in the United States today.

In particular, while we agree that setting a utilization threshold for carriers is a good idea, allowing carriers to choose the means by which they achieve that threshold is a very bad idea. The weakness of this proposal is enhanced by the FCC's failure to even suggest a means of verifying carrier claims that they have met the utilization thresholds the FCC might set. Thus, it appears that the FCC is proposing to invite carriers to assert that they have met utilization thresholds and therefore, they need not conserve numbers. As the state outline notes, this is, indeed, tantamount to doing nothing at all.

We can point to a most compelling illustration of the plan's shortcomings. As noted in the previous section of these Comments, the ILECs assert vehemently that they have achieved 80 to 85 percent utilization of their numbering resources.[13] Suppose the FCC adopts a utilization threshold of 80 to 85 percent, as proposed by the states, and then allows carriers to choose how to meet that threshold. Based on their utilization claims, the ILECs could simply assert that they have already met that threshold and need not participate in or implement any conservation measures. Certainly, the ILECs utilization claims could be verified by audits. The CPUC acknowledges the NPRM's proposals for numbering audits, which California supports. But it will take some time to establish an audit process for all carriers nationwide. In the meantime, by virtue of claiming to have met a mandated utilization threshold, a "carrier choice" option would allow the ILECs not to engage in conservation activities while they continue to control large, unaudited supplies of numbers. In essence, then, the FCC's efforts to achieve greater efficiency in use of numbers would achieve very little, if anything.

More particularly, if the ILECs elect not to participate in number pooling, that effort will achieve more limited results. (NPRM, ¶ 218.) Again, we appreciate the ILECs' assertion that they have few numbers to donate to pooling endeavors.[14] But, if ILECs claim high utilization rates, and then choose not to participate in pooling, as they have done in California since issuance of the Pennsylvania Order, California believes

[13] The CPUC is not trying to "pick on" the ILECs, but no other industry segment claims to have such high utilization rates.

[14] A cursory review of NXX code assignments in the 310 NPA, however, demonstrates that the ILECs hold between 50 percent and two-thirds of all NXX codes in each rate center. Until we have obtained utilization data, we cannot agree with the

number pooling is doomed to fail as a number conservation measure. As noted previously in these Comments, the NANC/NRO Report posited that 1,000-block pooling can be implemented more quickly than any other conservation measure. Should states be foreclosed, de facto, from pursuing this option because the ILECs will not participate, we will lose a golden opportunity to prevent premature exhaust of existing and future NPAs, and thus, premature exhaust of the NANP.

Further, under a carrier choice scheme, the burden would be placed on state commissions to prove that a particular carrier is not meeting its utilization threshold. Thus, a carrier asserting that it has already met its utilization threshold would require the state commission to conduct an audit to determine the veracity of the carrier's assertion. The CPUC believes that, instead, access to number resources should be based on need, and carriers should have to demonstrate their need for the resources. A "carrier choice" scheme, in contrast, would not require a showing of need.

Similarly, the CPUC does not see how carriers can "choose" to participate in rate center consolidation. Either all carriers participate in the state commission's efforts to consolidate rate centers, or the effort may as well not occur. In California, despite our decision to allow CLECs to establish their own rate centers, virtually all CLECs opted instead to match the ILECs' rate centers.[15] If some of them decide not to participate in rate center consolidation, the process of consolidating rate centers will be undermined.

ILECs' contention that they have no blocks of numbers to share.

[15] We did require that CLECs notify us of their intention to establish rate centers inconsistent with the ILECs' rate centers. To date, only one carrier has notified us that it wanted to create independent rate centers.

All in all, the CPUC believes that carrier choice is a recipe for disaster. It will allow carriers to continue to draw numbers in whatever quantities they deem appropriate for their business purposes, with no true accountability until, and if, their number holdings are audited. In the meantime, the NANP will draw closer and closer to exhaust, and ultimately, the public will be required to pay billions of dollars to expand the NANP. California urges the FCC in the strongest possible terms to reject carrier choice.

IV. OTHER NUMBERING OPTIMIZATION SOLUTIONS

A. Rate Center Consolidation

Because rate centers are "inextricably linked with local call rating and routing issues, which fall within the traditional jurisdiction of state public utility commissions", the CPUC believes the FCC should let the states decide whether to consolidate rate centers and how to accomplish that goal. (See NPRM at ¶ 117.) California can suggest no incentives the FCC can, or should, impose to encourage ILECs to voluntarily combine rate centers. (Id. at ¶ 118.) The key component of rate center consolidation in California will be the question of whether ILECs should be reimbursed for lost toll revenues, and if so, for how much. These will be very difficult questions to answer, and will require a preliminary assessment of the technical considerations associated with RCC. We have no information at present from the industry to assist us in making that preliminary assessment.

Further, we believe that introduction of intraLATA dialing parity will make the ILECs more likely, not less likely, to hold firm on any request for a revenue neutral RCC

process. (NPRM, ¶ 118.) IntraLATA dialing parity allows competitors to more easily lure toll customers away from the ILECs, thus reducing the ILECs' intralata toll revenues. The prospect of losing additional intralata toll revenues through RCC is a prospect we believe most ILECs will not relish. In addition, the opportunity to recoup through adjustments to basic exchange rates any lost toll revenues resulting from RCC may prompt ILECs to inflate their estimates of reduced intralata toll revenues to include competitive losses spurred by intraLATA dialing parity.

Rate center location dictates both the scope of a customer's local calling area and the charges assessed per toll call. In California, we have 800 rate centers, each of which governs a relatively small, uniform, twelve-mile local calling area. For this reason, we cannot envision a way to migrate to larger calling areas without eliminating at least some toll routes. (NPRM, ¶ 118.) Unless the ILECs chose to sacrifice that lost intralata toll revenue, a revenue-neutral RCC process will mandate collecting the lost toll revenue from one or more other services, the most likely candidate being basic exchange service.

As noted earlier in these comments, because RCC is fundamentally a state issue, we strongly urge the FCC not to mandate state action on RCC before a state can implement number pooling. In the NANC Report provided to the FCC last October, the Number Resources Optimization Working Group stated that 1,000-block number pooling could be implemented within nineteen months from date of a regulatory order.[16] We estimate that the process of consolidating rate centers, from start to finish, and depending

[16] See Public Notice, DA 98-2265, Released: November 6, 1998, p. 4.

on how many rate centers we try to eliminate, would take eighteen months to resolve the technical and revenue issues, plus another year to implement the changes mandated by a CPUC decision. It would make no sense for the FCC to require states to postpone action on 1,000-block pooling, which could be implemented more quickly than RCC, in order to "undertake" RCC, a very contentious and time-consuming measure.

None of this is intended to suggest that the CPUC is unwilling to pursue RCC. Indeed, a preliminary review of NXX code assignments in the 310 NPA suggests that, contrary to assertions by the ILECs, some of those rate centers may be ripe for consolidation. We intend to explore this option. We remain concerned, however, about the potential implications for the 911 system and hope that the industry is able to resolve soon the technical problems that have arisen in some areas where rate centers have been consolidated.

B. Mandatory Ten-Digit Dialing

The CPUC has opened a docket to evaluate our statewide area code policy. In that docket we are considering whether to establish an area code policy which favors splits, favors overlays, or continues our policy of evaluating area code relief plans strictly on a case-by-case basis, with no preferred outcome. In the context of that docket, we are also addressing the question of whether the CPUC should establish a statewide 1+10-digit dialing pattern. We concur with the position set forth in the state outline that a determination of whether to impose a dialing pattern which includes both the area code and the customer's seven-digit number is best left to the states.

Recently, the California telecommunications industry initiated 1+10-digit dialing in the 310 area code in the metropolitan Los Angeles area. The public has not responded positively to the 1+10-digit dialing requirement. Indeed, public upset over imposition of the overlay, and the mandatory 1+10-digit dialing prompted a California Legislator and a Congressmember, both with districts in the 310 NPA area, to file with the CPUC a petition seeking to modify the decision adopting the overlay plan in that NPA. They were subsequently joined in that effort by the City of Los Angeles, and the speaker of the California Assembly, whose district also includes some of the 310 NPA. We cannot comment on either the status of that petition, or on the status of our Rulemaking on area code policy. We note these facts simply to inform the FCC that public interest in dialing patterns and the form of area code relief runs very high in California. The CPUC believes that affording states more, rather than less, discretion over these matters allows state commissions to respond to local concerns and conditions.

As for D-digit expansion, we addressed this issue in our comments on the NANC/NRO Report,

> [T]he use of a 1 or 0 as the D-digit in an NXX code raises questions about how these NXXs would integrate into intrastate dialing patterns, particularly with regard to access to operators, toll dialing, and inter-NPA calling. Given these implementation concerns, the CPUC believes that states may be better positioned than the FCC to evaluate whether it is advantageous to employ D-digit NXX codes based on their numbering needs. (CPUC's Comments, filed January 15, 1999, p. 10.)

Consequently, we concur with the position set forth in the state outline that the FCC should not move forward with this option at this time. Too many implementation